

**THE UNIVERSITY OF ARIZONA JAMES E. ROGERS COLLEGE OF LAW
ARIZONA STATE UNIVERSITY SANDRA DAY O'CONNOR COLLEGE OF LAW
PHOENIX SCHOOL OF LAW**

June 29, 2012

Arizona Supreme Court
The Honorable Rebecca White Berch
Chief Justice
1501 West Washington
Phoenix, Arizona 85007

Re: Petition R-12-0002

Dear Chief Justice Berch:

We would like to respond to the letter opposing Petition R-12-0002 filed by the Honorable William D. O'Neil. We appreciate this opportunity to clarify the issues raised by Judge O'Neil, some of which have been raised and answered elsewhere.

First and foremost, this proposal responds to fundamental challenges to legal education. Critics have long asserted that law schools do not prepare students for the practice of law and the third year curriculum should be modified to accomplish this goal. In recent years and months, these concerns have become more visible to the general public around the United States and to prospective and current law students and lawyers. In more recent times, critics have also had more grounds to note the challenges to students of the increasing cost of legal education at both public and private institutions, especially in light of the increasingly challenging market for legal jobs.

Petition R-12-0002 responds to these criticisms by providing the three law schools with a framework around which we can modify and improve our third-year curriculum (and no doubt make additional and related changes throughout the three years of study). The petition, if granted, would also provide employers with an incentive to consider hiring students soon after graduation, rather than many months later when they have passed the bar examination. We believe the rule change would benefit our students and Arizona's legal profession by making legal education more relevant to the practice of law. As with the decision of this court to adopt the Uniform Bar Examination, we also believe this rule change could be influential in the national debate surrounding legal education reform.

Judge O'Neil suggested that the proposed rule would require waiver of some of the ABA's accreditation standards. It would not. The proposed rule would not require any waiver of the American Bar Association's Standards for the approval of law schools. The proposal is entirely consistent with those rules, which leave bar admission decisions to the states. It also responds directly and substantially to a request by the ABA for law schools to creatively address the criticisms outlined above.

Judge O'Neil noted that attempts in the past in a handful of other states to allow students to sit for the bar examination prior to law school graduation failed. This concern was also raised and addressed by the Arizona State Bar in the statement by John Furlong. The fundamental difference between that time and those states and this time in Arizona is that the law schools then were not prepared to deal with the educational needs of students who would take the bar prior to graduation and did not consider the possibility of taking the bar before graduation to be part of legal education. For example, those law schools did not address the conflict between coursework and bar study.

Contrary to that history, Petition R-12-0002 was submitted by all three Arizona law schools—The University of Arizona, Arizona State University, and Phoenix School of Law. The Arizona law schools want this rule change and view this petition as an opportunity to improve legal education.

The relevance of the history of an early bar in other states, and in particular in Georgia until the early 1990s, led the State Bar, as part of its own close study and debate about this proposal, to inquire about the history in Georgia. The State Bar's recommendation to this court notes that

The Georgia Board of Bar Examiners believed that bar examination performance would improve if students could study for it full time without competing classroom demands.

According to the Georgia memorandum, the Board of Bar Examiners requested the change after discussing the matter with the state's law school deans.

Despite Georgia's experience, the Arizona deans have a well-thought-out plan for allowing only "certified" law students to take the bar examination that is part of a larger response to the "critiques of modern legal education." See memorandum attached as Appendix B distributed by the petitioners at the March 2, 2012, State Bar Board of Governors Rules Committee meeting.

For those students who opt to take the bar examination and are certified to do so, The University of Arizona and Arizona State University law school deans plan to modify their third-year, second-semester curricula to accommodate them, and to focus the post-examination period on classes "that are more closely tied to the transition from theory to practice."

As the State Bar noted in its recommendation, each law school has thought carefully about the importance of identifying those students who can succeed in this path, and in developing a curriculum that does not adjust to this proposed change, but uses it to fundamentally reshape the transition from theory to practice. In this spirit, all three schools anticipate offering a modified third-year curriculum for students seeking certification. Other than possibly one course to complement bar preparation, students would not take courses in January and February, allowing them to focus on study for the bar exam.

The law schools are exploring curricular ideas with various groups, including students, alumni, and members of the bench and bar, to use the time after the February bar for those students who seek and are certified for this option. The schools are seeking this information in the desire to be responsive to the needs of the profession and help our students be better prepared for practice. Pending final faculty approvals, we expect some of these options would include expanding skills offerings to address more ethics and professionalism issues, law practice management, discovery, and emerging issues in various practice areas. Another possibility is offering targeted field placement opportunities during the final nine weeks of the semester to allow students to put their knowledge into practice in a real law office. This transition period from the theory of law school to the practice of law seems especially useful post-bar exam, yet the current rules do not provide this opportunity. The law schools have respectfully been exploring these options with full appreciation that the petition remains before the Court.

We also understand Judge O'Neil's comment that taking the bar examination early does not guarantee early admission. That is, of course, true. Students will still have to pass the bar and the MPRE, as well as complete their character and fitness applications and the course on Arizona law. Yet it is also true that students can be admitted earlier if they pass the bar earlier. With the rule change, students could be admitted in Arizona sooner than if they had to wait until after graduation to sit for the bar exam. In addition, there is no reason to believe that students taking the bar in February with a modified curriculum will be less successful; the law schools and the law students have every incentive to certify only those students who are, in fact, likely to succeed. That shared incentive with our students and the profession to have our students pass the bar the first time will ensure more structure, not less. Finally, we see no indication that any other state bar, including the other Uniform Bar Exam jurisdictions, have any rules that will limit recognition of pre-graduation bar exam results.

Especially in the first years, we do not anticipate that large numbers of students would be certified by each law school. If the petition is approved, students would need to plan ahead to be able to take advantage of this opportunity, responding to guidelines promulgated in accordance with the petition by each school, and would need to be likely to succeed in order to be certified.

We believe the rule change is both important and proper because the purpose is to respond to a changing world of legal education and legal practice. The three law schools have proposed this rule change in the firm belief that it would improve legal education.

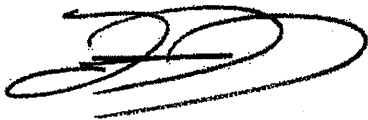
Among the many differences with the experience in the handful of states like Georgia that have attempted similar pre-graduation bar exams in the past is that those states amended their rules without considering the ability of their state's law schools to modify their programs. This Petition not only has the support of Arizona's three law schools, and was filed by those schools: each institution is prepared to make the changes needed to make this rule change successful.

In short, Petition R-12-0002 is an effort to significantly improve legal education and improve our students' abilities to compete in the job market. We, and others, have thoroughly considered the potential drawbacks with this proposal. We are committed to making this change successful.

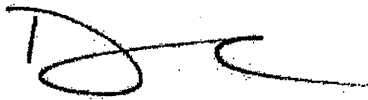
And we have welcomed the chance to talk about this proposal with members and committees of the State Bar, with county bar associations, and with anyone else who has questions about what would be a significant change in the way things have been done.

Thank you for your consideration.

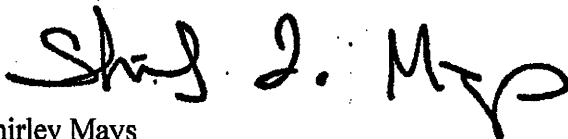
Sincerely,

A stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.

Lawrence Ponoroff
The University of Arizona James E. Rogers College of Law

A handwritten signature in black ink, featuring a large 'D' followed by a series of connected loops and a long horizontal stroke.

Douglas J. Sylvester
Arizona State University Sandra Day O'Connor College of Law

A handwritten signature in black ink, appearing to read 'Shirley Mays' with a stylized 'M' and a long horizontal stroke.

Shirley Mays
Phoenix Law School